

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

SYLVESTER KELLY,

Petitioner,

v.

CIVIL ACTION NO. 1:14-19369

SANDRA BUTLER, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER

By Standing Order, this matter was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and recommendations ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 4.)

Magistrate Judge Tinsley submitted to the court his PF&R on October 14, 2016, in which he recommended that the Court deny Petitioner's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (Doc. No. 1) and Petitioner's Motion for Writ of Mandamus (Doc. No. 11), and dismiss this civil action from the docket of the court.

In accordance with 28 U.S.C. § 636(b), the parties were allotted seventeen days in which to file any objections to Magistrate Judge Tinsley's PF&R. The failure of any party to file such objections within the time allotted constitutes a

waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Neither party filed any objections to the Magistrate Judge's PF&R within the required time period.

Accordingly, the court adopts Magistrate Judge Tinsley's PF&R as follows:

- 1) Petitioner's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (Doc. No. 1) and Petitioner's Motion for Writ of Mandamus (Doc. No. 11) are **DENIED**; and
- 2) The Clerk is directed to remove this matter from the docket of the Court.

Petitioner filed a letter form motion for an extension of time to respond to the PF&R. (Doc. No. 14.) In that motion, Petitioner asked for an additional thirty (30) days to respond to the PF&R. The additional time Petitioner requested has long since passed and he has yet to file his objections. Accordingly, Petitioner's motion for an extension of time is **DENIED as moot**.

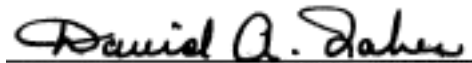
Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that

reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683–84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is further directed to forward a copy of this Order to counsel of record and to Petitioner.

It is **SO ORDERED** this 1st day of February, 2017.

ENTER:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge